**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.5913 OF 1996

Kum.Sunita Dattatray Kadam .. Petitioner
V/s.
State of Maharashtra and Ors. .. Respondents.

Mr.S.V.Sadavarte for the Petitioner.
Mr. C.R.Sonawane, AGP for Res.Nos.1 to 4.

**CORAM : S. RADHAKRISHNAN &**
**S.A.BOBDE, JJ.**

**DATED : 16.12.2004.**

**P.C.:-**

1. Heard the learned counsel for the Petitioner, the learned Additional Government Pleader for the Respondent Nos.1 to 4. By this Petition, the Petitioner is challenging the impugned judgment and order dated 30.9.1996 passed by the Committee for Scrutiny and Verification of Tribe Claims, Pune invalidating the claim of the Petitioner, who claims to be belonging to "Thakar", which is a Scheduled Tribe.

2. We have perused the impugned order passed by the Respondent No.3 Committee. The said Committee has concluded that the Petitioner belongs to "Thakar Community", however in view of the background of socio-cultural traits, ethnic linkage, affinity test, the documents of the Petitioner’s claim of Scheduled tribe as "Thakar", was rejected, mainly relying on the judgment of the Supreme Court in Madhuri Patil’s case.

3. The learned counsel for the Petitioner Shri Sadavarte brought to our notice a very recent Judgment of the Division Bench of our High Court dated 4.10.2004 in Writ Petition No. 3153 of 1996 in **Sunil Murlidhar Thakur & Anr. V. State of Maharashtra and others,** wherein identical issue of caste invalidation of Thakur was involved. The Petitioner therein has claimed to be belonging to "Thakur", which is a Scheduled tribe. In the said matter also, the Caste Scrutiny Committee, though found that the Petitioner belongs to "Thakur community", but in view of the affinity test, ethnic linkage and socio-cultural traits, the Petitioner's Caste validity was invalidated. In the said case, the Division Bench referred to the Division Bench judgments of this Court in **Pandurang Rangnath Chavan Vs. State of Maharashtra and Ors. 1998 (2) Mh. L.J. 806** and **Chandrankant Bajirao Shinde V. State of Maharashtra and Ors. 2003 (2) Mh.L.J. 471** and an unreported judgment of this Court in Writ Petition No. 2475 of 1988 in **Babulalsingh Parmar Vs. State of Maharashtra and ors.** dated 28.7.2003.

4. In the aforesaid Division Bench Judgment in **Chandrakant Bajirao Shinde Vs. State of Maharashtra and Ors. 2003 (2) Mh.L.J. 471,** the following observations would be of relevance :-

> "5. The Constitution (Scheduled Tribes) Order, 1950 was issued on September 1950 in exercise of powers conferred upon the President of India by clause (1) of Article 342 of the Constitution of India. In the

Schedule appended to the said order, admittedly Thakar was not notified as a Schedule Tribe within the then State of Bombay. Thereafter by the Scheduled Caste and Scheduled Tribes Orders (Amendment) Act, 1956 the Presidential Order, 1950 was amended and in some of the districts of the State of Bombay Scheduled Tribes Thakur or Thakar including - Ka Thakur, Ka Thakar, Ma Thakur, Ma Thakar were included. Thereafter with effect from 18/9/1976, the Scheduled Caste and Scheduled Tribes Orders (Amendment) Act, 1976 came into force, amongst other amending the Presidential Order i.e. Constitution Scheduled Tribes Orders, 1950 Entry no. 44 of the Schedule, Part IX Maharashtra thereof notifies "Thakur", "Thakar", "Ka Thakur", "Ka Thakar", Ma Thakar" without any area restriction being Scheduled Tribe within the entire State of Maharashtra.

8. The Constitution Bench of the Supreme Court recently had an occasion to consider inter alia this aspect in **State of Maharashtra Vs. Milind and Ors; 2001 (1) Mh.L.J. (SC) 1 - (2001) 1 S.C.C. 4.** In paragraphs 15, 28 and 36(1) of the report, it was ruled thus:-

> 15. Thus it is clear that States have no power or the Government of the day in a State is relieved from the pressure or burden of tinkering with the Presidential Orders either to gain popularity or secure votes. Number of persons in order to gain advantage in securing admissions in educational institutions and employment in State services have been claiming as belonging to either scheduled castes or scheduled tribes depriving genuine and needy persons belonging to scheduled castes and scheduled tribes covered by the Presidential orders, defeating and frustrating to a large extent the very object of protective discrimination given to such people based on their educational and social backwards. Courts cannot and should not expand jurisdiction to deal with the question as to whether a particular caste, sub caste; a group or part of tribe or sub tribe is included in any one of the entries mentioned in the Presidential Orders issued under Articles 341 and 342 particularly so when in clause (2) of the said article, it is expressly stated that the said order cannot be amended or varied except by law made by Parliament. The power to include or exclude amend or alter Presidential Order is expressly and conclusively conferred on and vested with Parliament and that too by making a law in that regard. The president had the benefit of consulting the States through Governors of States

which had the means and machinery to find out and recommend as to whether a particular caste or tribe was to be included in the Presidential order. If the said orders are to be amended, it is Parliament that is in a better position to know having the means and machinery unlike courts as to why a particular caste or tribe is to be included or excluded by law to be made by Parliament. Allowing the State Government or courts or other authorities or Tribunals to hold inquiry as to whether a particular caste or tribe should be considered as one included in the Schedule of the Presidential Order, when it is not specifically included, may lead to problems, in order to gain advantage of reservations for the purpose of Article 15(4) or 16(4) several persons have been coming forward claiming to be covered by Presidential Orders issued under Articles 341 and 342. This apart, when no other authority other than Parliament, that too by law alone can amend the Presidential Orders. Neither the State Government nor the courts nor Tribunals nor any authority can assume jurisdiction to hold inquiry and take evidence to declare that a caste or tribe is included in Presidential orders in one entry on the other although they are not expressly and specifically included. A court cannot alter or amend the said Presidential Orders for the very good reason that it has no power to do so within the meaning content and scope of Articles 341 and 342. It is not possible to hold that either any inquiry is permissible or any evidence can be let in, in relation to a particular caste or tribe to say whether it is included within Presidential Orders when it is not so expressly included.

28. Being an respectful agreement we reaffirm the ratio of the two constitution bench judgements aforementioned and state in clear terms that no enquiry at all is permissible and no evidence can be let in to find out and decide that if any tribe or tribal community or part of or group within any tribe or tribal community is included within the scope and meaning of the entry concerned in the Presidential Order when it is not so expressly or specifically included. Hence, we answer question 1 in the negative.

36(1) It is not at all permissible to hold any inquiry or let in any evidence to decide or declare that any tribe or tribal community or part of or group within any tribes or tribal community is included in the general name even though it is not specifically mentioned in the

> entry concerned in the Constitution (Scheduled Tribes) Order 1950."
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> In all these four writ petitions, it is not disputed before us that the Committee has recorded a finding that the petitioners have established that they belong to "Thakur" but the Committee on erroneous assumption proceeded that Thakur Community is being different than "Ka Thakur and Ma Thakur". We are unable to appreciate the approach of the learned members of the Committee in analysing the issue posed before it. In view of the judgments of this Court referred to above that the Committee has no competence or authority to go into questions whether the petitioners belong to Thakur higher caste and or it has done in the present case. We are in respectful agreement with all three judgments of the Court referred to by the learned Counsel for the petitioners. We also approve the view taken by the learned judges of the Division Bench in Raviprakash unreported. Though the learned Judges rendered separate but concurring judgments, we endorse the view taken by our learned brother Kochar, J. who was the member of the Division Bench who has decided Raviprakash's case (supra). In view of the above said judgments, to which we respectfully agree and adopting the same reasons, the orders challenged in these petitions are required to be set aside. Accordingly, impugned orders passed by the Scrutiny committee in all these writ petitions is set aside, Rule made absolute. No order as to costs."

5. In the present case the Committee has come to the conclusion that Kum.Sunita Dattatraya Kadam does not belong to Thakar, Schedule Tribe. We are of the view that in view of the judgment of the Division Bench in **Chandrakant Bajirao Shinde v. State of Maharashtra and others 2003 (2) Mh.L.J. 471 (supra),** the Scrutiny Committee is not justified in proceeding to inquire on the basis of socio-cultural traits and ethnic linkage to find out that whether the Petitioner belongs to "Thakar

Scheduled Tribe".

6. The learned counsel for the Petitioner also referred to another judgment of the Division Bench in Writ Petition No. 4182 of 1996 dated 20.7.2004 in **Shri Bharatbhushan Manikrao Wankhede Vs. The Executive Magistrate and Ors.** which also involved the same issue of Thakur caste being invalidated, as not belonging to Scheduled Tribe for identical reasons. Therein also the order of the Caste Scrutiny Committee was quashed and set aside.

7. Mr.Sadavarte, the learned Counsel for the Petitioner has brought to our notice the order of the Division Bench of this Court dated 18th October, 2004 passed in the case of **Hemant Popatrao Kadam V/s State of Maharashtra & Ors.** (**Writ Petition No.1691 of 1998**), wherein also the Division Bench has quashed and set aside the order of the Scrutiny Committee. Referring to the aforesaid order, Mr.Sadavarte, the learned Counsel for the Petitioner has pointed out that the Petitioner in the aforesaid case viz.**Hemant Popatrao Kadam** is the cousin of the present Petitioner **Kum.Sunita Dattatraya Kadam**. He has pointed out that the **Popatrao Kadam** (father of Hemant) and **Dattatraya Kadam** (father of Kum.Sunita) are the real

brothers.

7. Under the aforesaid facts and circumstances, we quash and set aside the impugned order of the Scrutiny Committee dated 30.9.1996. Rule is made absolute in terms of prayer clause (b) of the Petition.

8. Needless to say that, as we have quashed and set aside the order of the Caste Scrutiny Committee, the Petitioner shall be treated as a permament employee and accordingly all the consequential benefits which could have otherwise accrued should also be paid to the Petitioner.

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